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8 Attorneys for Plaintiff
VISA U.S.A. INC.
9

10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
12

13 VISA U.S.A. INC.,

Case No. CV-07-5585 BZ

14 Plaintiff,

DECLARATION OF RODERICK M.
THOMPSON IN SUPPORT OF PETITION
TO COMPEL ARBITRATION

15 vs.

16 MARITZ INC., d/b/a MARITZ
17 LOYALTY MARKETING,

Date: January 2, 2008
Time: 10:00 a.m.
Courtroom: G (15th Floor)

18 Defendant.
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20 I, Roderick M. Thompson, declare as follows:

21 1. I am an attorney licensed to practice law in the State of California, and a partner
with the law firm of Farella Braun + Martel LLP, counsel for Plaintiff Visa U.S.A. Inc. ("Visa")
22 in this action. I have first hand knowledge of the following facts; if called as a witness, I would
23 testify to the same.

24 2. By letter dated April 20, 2007, Visa terminated the contract it had with Defendant
Maritz Inc. ("Maritz"), explicitly reserving all of its rights. A true and correct copy of this letter
25 is attached hereto as Exhibit A.
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1 3. In a letter dated May 7, 2007, Maritz responded, claiming that it was owed more
 2 than \$5 million by Visa, and stating that Maritz was reserving its rights as Visa had. A true and
 3 correct copy of this letter is attached hereto as Exhibit B.

4 4. In a letter dated June 5, 2007, Visa responded stating that it anticipated providing
 5 additional information to Maritz as to the nature and amount of Visa's claims at the appropriate
 6 time, and suggesting that the parties discuss "a process for resolving our" claims. A true and
 7 correct copy of this letter is attached as Exhibit C.

8 5. In early July, I received a call from Steve Gallant, VP and Associate General
 9 Counsel of Maritz. We discussed our clients' shared goal of an efficient resolution of their
 10 respective claims and agreed to a three step (negotiation, mediation and arbitration) dispute
 11 resolution process set forth in the attached Letter Agreement. A true and correct copy of this
 12 letter is attached as Exhibit D. Mr. Gallant suggested the 30-60-90 day time increments for the
 13 three stages as an efficient way to structure a tiered ADR procedure.

14 6. On July 10, Mr. Gallant signed the Letter Agreement, transmitting it to me via the
 15 following email:

16 Rod - attached is an executed agreement outlining the procedures **for resolving any**
 17 **differences that may exist between Visa and Maritz.** It is my understanding that the
 18 first direct negotiation meeting will take place on or about July 24, 2007 and there will
 19 then be 30 days to reach a resolution. **In the event we are unable to reach agreement,**
 20 **we will then escalate to mediation and arbitration as set forth in the letter.** Please call
 21 me should you have any questions.

22 See Gallant Email dated July 10, 2007 (emphasis added). A true and correct copy of this email is
 23 attached as Exhibit E.

24 7. The Letter Agreement stated as its second sentence, "We agreed that our clients'
 25 **respective claims for damages** resulting from alleged breaches of the [underlying contract] **and**
 26 **related claims** will all be resolved outside of court." Exhibit D, Letter Agreement (emphasis
 27 added). While the Letter Agreement noted that details regarding the arbitration procedure still
 28 needed to be worked out, Maritz unequivocally stated "our clients intend to be bound by this

1 agreement to resolve all disputes outside of court.” Accordingly, “to the extent that [our clients]
 2 are unable to agree on any aspect of the procedure,” it would be resolved by the AAA. *See*
 3 Exhibit D, Letter Agreement.

4 8. Mr. Gallant called me on or about July 23. He asked whether Visa was making a
 5 claim for payment for Maritz breaches of the underlying contract and, if so, how much it was. I
 6 told him that Visa’s claim was considerable, in the range of tens of millions of dollars. I read the
 7 language of the agreement to Mr. Gallant stating that it would resolve both parties’ **“respective**
 8 **claims for damages.”** *See* Exhibit D, Letter Agreement (emphasis added). Mr. Gallant said he
 9 was surprised and upset by the magnitude of Visa’s claim, but that nothing I had said in our
 10 conversations had been inaccurate and he was not accusing me of trying to deceive him. He said
 11 that Maritz would engage outside counsel, and that Maritz might or might not agree to proceed
 12 with arbitration.

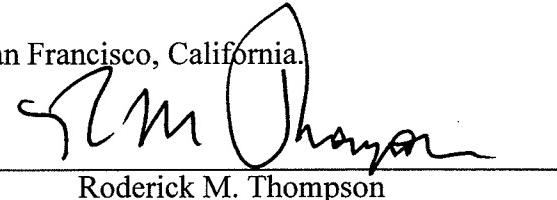
13 9. On November 2, 2007, Visa filed a demand for arbitration with the American
 14 Arbitration Association (“AAA”) in San Francisco, which I served on Charles Weiss, counsel for
 15 Maritz, the same day. A true and correct copy of this letter is attached hereto as Exhibit F.

16 10. On November 16, 2007 Mr. Weiss wrote to the AAA, stating that “It is Maritz’s
 17 position that there is no valid and enforceable arbitration agreement between Maritz and Visa”
 18 and that “Maritz objects to any arbitration occurring.” A true and correct copy of Mr. Weiss’s
 19 letter is attached hereto as Exhibit G.

20 11. Visa submitted to the AAA a response to Mr. Weiss’s letter on November 20,
 21 2007. A true and correct copy of Visa’s response is attached hereto as Exhibit H.

22 I declare under penalty of perjury under the laws of the State of California that the
 23 foregoing is true and correct.

24 Executed on November 21, 2007, at San Francisco, California.



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Roderick M. Thompson